

# PATENT COOPERATION TREATY

## PCT

NPL 5

### INTERNATIONAL SEARCH REPORT

(PCT Article 18 and Rules 43 and 44)

Applicant's or agent's file reference 141-446 PCT	<b>FOR FURTHER ACTION</b>	see Notification of Transmittal of International Search Report (Form PCT/ISA/220) as well as, where applicable, item 5 below.
International application No. PCT/US04/04112	International filing date ( <i>day/month/year</i> ) 12 February 2004 (12.02.2004)	(Earliest) Priority Date ( <i>day/month/year</i> ) 19 September 2003 (19.09.2003)
Applicant ANDRX LABS LLC		

This international search report has been prepared by this International Searching Authority and is transmitted to the applicant according to Article 18. A copy is being transmitted to the International Bureau.

This international search report consists of a total of 2 sheets.



It is also accompanied by a copy of each prior art document cited in this report.

**1. Basis of the Report**

a. With regard to the language, the international search was carried out on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.



the international search was carried out on the basis of a translation of the international application furnished to this Authority (Rule 23.1(b)).

b. With regard to any nucleotide and/or amino acid sequence disclosed in the international application, the international search was carried out on the basis of the sequence listing:



contained in the international application in written form.



filed together with the international application in computer readable form.



furnished subsequently to this Authority in written form.



furnished subsequently to this Authority in computer readable form.



the statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.



the statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

2. ☐ Certain claims were found unsearchable (See Box I).

3. ☐ Unity of invention is lacking (See Box II).

4. With regard to the title,



the text is approved as submitted by the applicant.



the text has been established by this Authority to read as follows:

5. With regard to the abstract,



the text is approved as submitted by the applicant.



the text has been established, according to Rule 38.2(b), by this Authority as it appears in Box III. The applicant may, within one month from the date of mailing of this international search report, submit comments to this Authority.

6. The figure of the drawings to be published with the abstract is Figure No. \_\_\_\_\_



as suggested by the applicant.



because the applicant failed to suggest a figure.



because this figure better characterizes the invention.



None of the figures

## INTERNATIONAL SEARCH REPORT

International application No.

PCT/US04/04112

**A. CLASSIFICATION OF SUBJECT MATTER**

IPC(7) : A61K 9/28, 9/16

US CL : 424/474, 490

According to International Patent Classification (IPC) or to both national classification and IPC

**B. FIELDS SEARCHED**

Minimum documentation searched (classification system followed by classification symbols)

U.S. : 424/474, 490

Documentation searched other than minimum documentation to the extent that such documents are included in the fields searched

Electronic data base consulted during the international search (name of data base and, where practicable, search terms used)  
BRS**C. DOCUMENTS CONSIDERED TO BE RELEVANT**

Category *	Citation of document, with indication, where appropriate, of the relevant passages	Relevant to claim No.
A	US 6,451,342 B2 (ADJEI et al.) 17 September 2002 (17.09.2002), see entire document.	1-34
A	US 6,524,621 B2 (ADJEI et al.) 25 February 2003 (25.02.2003), see entire document.	1-34

☐ Further documents are listed in the continuation of Box C.☐ See patent family annex.

## \* Special categories of cited documents:

"A" document defining the general state of the art which is not considered to be of particular relevance

"E" earlier application or patent published on or after the international filing date

"L" document which may throw doubts on priority claim(s) or which is cited to establish the publication date of another citation or other special reason (as specified)

"O" document referring to an oral disclosure, use, exhibition or other means

"P" document published prior to the international filing date but later than the priority date claimed

"T"

later document published after the international filing date or priority date and not in conflict with the application but cited to understand the principle or theory underlying the invention

"X"

document of particular relevance; the claimed invention cannot be considered novel or cannot be considered to involve an inventive step when the document is taken alone

"Y"

document of particular relevance; the claimed invention cannot be considered to involve an inventive step when the document is combined with one or more other such documents, such combination being obvious to a person skilled in the art

"&amp;"

document member of the same patent family

Date of the actual completion of the international search

26 July 2004 (26.07.2004)

Date of mailing of the international search report

12 AUG 2004

Name and mailing address of the ISA/US

Mail Stop PCT, Attn: ISA/US  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, Virginia 22313-1450

Facsimile No. (703) 872-9306

Authorized officer

Robert M. Joyner  
Telephone No. (571) 272-1600*J. Roberts for*

# PATENT COOPERATION TREATY

From the  
INTERNATIONAL SEARCHING AUTHORITY

To:  
MARTIN P. ENDRES  
HEDMAN & COSTIGAN, P.C.  
1185 AVENUE OF THE AMERICAS  
NEW YORK, NY 10036

# PCT

## WRITTEN OPINION OF THE INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Applicant's or agent's file reference <b>141-446 PCT</b>		Date of mailing (day/month/year) <b>12 AUG 2004</b> <b>FOR FURTHER ACTION</b> See paragraph 2 below
International application No. <b>PCT/US04/04112</b>	International filing date (day/month/year) <b>12 February 2004 (12.02.2004)</b>	Priority date (day/month/year) <b>19 September 2003 (19.09.2003)</b>
International Patent Classification (IPC) or both national classification and IPC <b>IPC(7): A61K 9/28, 9/16 and US Cl.: 424/474, 490</b>		
Applicant <b>ANDRX LABS LLC</b>		

**1. This opinion contains indications relating to the following items:**

- ☒ Box No. I      Basis of the opinion
- ☐ Box No. II      Priority
- ☐ Box No. III      Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV      Lack of unity of invention
- ☒ Box No. V      Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI      Certain documents cited
- ☐ Box No. VII      Certain defects in the international application
- ☐ Box No. VIII      Certain observations on the international application

**2. FURTHER ACTION**

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

**3. For further details, see notes to Form PCT/ISA/220.**

Name and mailing address of the ISA/ US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 872-9306	Authorized officer Robert M. Joynes <i>J. Roberts for</i> Telephone No. (571) 272-1600
--	--

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US04/04112

**Box No. I Basis of this opinion**

1. With regard to the **language**, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.  
☐ This opinion has been established on the basis of a translation from the original language into the following language \_\_\_\_\_, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).
2. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:
  - a. type of material  
☐ a sequence listing  
☐ table(s) related to the sequence listing
  - b. format of material  
☐ in written format  
☐ in computer readable form
  - c. time of filing/furnishing  
☐ contained in international application as filed.  
☐ filed together with the international application in computer readable form.  
☐ furnished subsequently to this Authority for the purposes of search.
3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.
4. Additional comments:

WRITTEN OPINION OF THE  
INTERNATIONAL SEARCHING AUTHORITY

International application No.  
PCT/US04/04112

**Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement**

1. Statement

Novelty (N)	Claims <u>1-34</u>	YES
	Claims <u>NONE</u>	NO
Inventive step (IS)	Claims <u>1-34</u>	YES
	Claims <u>NONE</u>	NO
Industrial applicability (IA)	Claims <u>1-34</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and explanations:

Claims 1-34 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest a pharmaceutical dosage form where in the controlled release core contains an antihyperglycemic drug and the coating contains a thiazolidinedione derivative wherein the coating layer is an immediate release layer. The cited references teach this two drug combination but the outside layer is not an immediate release composition where not less than 85% of the drug is released within 45 minutes but rather a controlled release layer that releases the drug over a longer period of time.

Claims 1-34 meet the criteria set out in PCT Article 33(4), and thus have industrial applicability as a pharmaceutical formulation because the subject matter claimed can be made or used in industry.